

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LOUIS DREYFUS CORPORATION

Plaintiff,

-against-

M/V CMA CGM CORTES, her engines,  
boilers, tackle, etc., ALPHA SHIPMANAGEMENT  
GMBH & CO., KG, ALPHA SHIP GMBH & CO  
KG MS 'NEPTUN', COMPANIA SUD AMERICANA  
DE VAPORES S.A. (C.S.A.V.)

Defendants.  
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07 Civ. 6622 (WHP)  
ECF CASE

DECLARATION OF  
DAVID MARKER  
IN OPPOSITION TO  
DEFENDANTS' MOTIONS  
TO DISMISS

I, David Marker, hereby declare under the penalty of perjury that the following  
is true and correct as prescribed in 28 U.S.C. §1746:

1. I am the Logistics Manager of Louis Dreyfus Corporation, Coffee Division,  
located at 20 Westport Road, Wilton, CT, and am familiar with the facts and  
circumstances of the non-delivery of CSAV container no. FSCU3411832 containing 275  
bags of Salvadorian Green Coffee purchased by Louis Dreyfus for delivery to Antwerp  
in March/April 2007.
2. By Purchase Contract dated December 26, 2006, Louis Dreyfus purchased  
2,200 bags of coffee from Sociedad Cooperativa Cuzcachapa de R.L. of Santa Ana, El  
Salvador. This contract was prepared and executed by Louis Dreyfus at its Connecticut  
office. Attached as Exhibit 1 is a true copy of the Purchase Contract.
3. On February 27, 2007, Louis Dreyfus sent its Shipping Instructions from its  
Connecticut office to Sociedad Cooperativa Cuzcachapa for the 2,200 bags to be loaded  
into eight ocean shipping containers of 275 bags, each, and delivered to defendant

Compania Sud Americana de Vapores S.A. (CSAV) at the shipper's premises in Santa Ana, El Salvador for carriage to Antwerp. The shipping advice, and copies of the invoice and bill of lading were to be emailed to Louis Dreyfus at its Connecticut office, and the original documents were to be presented for payment at Deutsche Bank AG New York at 60 Wall Street, New York, NY. Attached as Exhibit 2 is a true copy of the Shipping Instruction # 13971.

4. Cooperativa Cuzcachapa de R.L. invoiced the Connecticut office of Louis Dreyfus for the 2,200 bags of coffee in the amount of \$363,495.00, although the final fixed price was adjusted in accordance with the terms of the Purchase Contract. Attached as Exhibit 3 is a true copy of the shipper's Invoice no. 000076 dated March 27, 2007. Louis Dreyfus paid the adjusted price under this invoice in two payments, the first for the seven containers that arrived in Antwerp in the amount of \$312,571.88, and the second for the one container that was non-delivered by CSAV in the amount of \$44,653.13. Attached as Exhibit 4 are true copies of the two payment advices issued from our Connecticut office.

5. Louis Dreyfus does not have an office in Guatemala or El Salvador. There is a consultant named Gustavo Ruiz in Guatemala City that Louis Dreyfus uses to facilitate its coffee purchases in the region, but Gustavo Ruiz is not an employee of Louis Dreyfus and operates his own company called, Export Alliance, S.A. Gustavo Ruiz is not involved in transportation issues between Louis Dreyfus and CSAV or CSAV's subagents.

6. Louis Dreyfus did have a Service Contract no. US-CHIW-05-0658-C0190US

with CSAV entered into by CSAV Agency, LLC, at 99 Wood Ave., South, Iselin, NJ. (Attachment A to defendant CSAV's Exhibit D). This Service Contract contained a provision at Clause 11 for CSAV and Louis Dreyfus to arbitrate disputes in the City of New York. Any arbitration awards were to be enforced in the United States District Court for the Southern District of New York, where CSAV Agency, LLC had agreed that CSAV was subject to personal jurisdiction in the federal court in New York City.

7. However, Service Contract no. US-CHIW-05-0658-C0190US expired at the end of 2006, and also did not contain the shipping rates for the carriage of the subject cargo to Antwerp, which was \$1,750.00 per container. Attached as Exhibit 5 is a copy of the freight invoice no. 150366 from Thommen Intertrans AG, CSAV's freight collection agent, which shows that Louis Dreyfus paid the freight for all eight containers of coffee, even though one of the containers was not delivered in Antwerp.

8. I personally negotiated the subject freight rates of \$1,750 per container with CSAV's representatives over dinner at a restaurant in New York City prior to the subject shipment in early 2007 or late 2006. This has been the normal and usual practice between myself and CSAV's Hamburg representatives, Jan Lahme and Susan Brandt, who, for the last three years, would come at least 3 or 4 times a year from Hamburg, Germany to New York to negotiate freight rates for Louis Dreyfus shipments of coffee to Europe.

9. In a blatant attempt to avoid all liability to Louis Dreyfus for the loss of container no. FSCU3411832, CSAV issued its through bill of lading no. 6HA001847 dated April 5, 2007, at San Salvador, El Salvador, for only seven (7) containers

containing only 1,925 bags of coffee. Attached as Exhibit 6 is a Non-negotiable copy of the 7 container through bill of lading no. 6HA001847.

10. After learning of the non-delivery of the eighth container no. FSCU3411832, and the issuance by CSAV of the 7 container through bill of lading, I strongly protested to the shipper that CSAV had received and agreed to transport 8 containers from El Salvador to Antwerp. CSAV acknowledged their error, intentional or otherwise, and then re-issued through bill of lading no. 6HA001847 dated April 5, 2007, at San Salvador, El Salvador, for all eight (8) containers, including container no. FSCU3411832. Attached as Exhibit 7 is a Non-negotiable copy of the 8 container through bill of lading no. 6HA001847.

It is, therefore, respectfully requested that this lawsuit against CSAV and the vessel owner be allowed to proceed in the Southern District of New York, which is the most convenient place for me as the most knowledgeable person at Louis Dreyfus involved with the purchase and sale of the coffee, the setting of the freight rates with CSAV, and the handling of the claim with our insurance broker, Aon Risk Services of New York, and our insurance company, Great American Insurance Company, Ocean Marine Division, also both located in New York City.

Dated: April 18, 2008

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David Marker, Logistics Manager  
Louis Dreyfus Corporation, Coffee Division